



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

May 4, 2009

VIA REGULAR U.S. MAIL

Dr Dwight Pfennig, Superintendent
Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Re: Docket No.: TSCA-03-2009-0100

Dear Dr Pfennig:

Enclosed please find the final Consent Agreement and Final Order ("CAFO") resolving case number: TSCA-03-2009-0100. The CAFO was signed by the Presiding Judicial Officer on April 30, 2009 and filed with the Regional Hearing Clerk on May 4, 2009. The case is considered closed and all matters involving TSCA-03-2009-0100 resolved.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (215) 814-2044.

Sincerely,

A handwritten signature in blue ink, which appears to read "Richard Ponak", is positioned below the word "Sincerely,".

Richard Ponak
Enforcement Officer

Enclosures

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Respondent

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DOCKET NO: TSCA-03-2009-0100

CONSENT AGREEMENT

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement ("CA"), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and The Pocono Mountain School District. This CA includes the assessment of a civil penalty against The Pocono Mountain School District ("Respondent"), because it is a local education agency liable for violations which occurred at Pocono Mountain East High School located at Pocono Mountain School Road, Swiftwater, Pennsylvania; Barrett Elementary Center located at Route 940, Cresco, Pennsylvania; Clear Run Elementary Center located 3700 Memorial Boulevard, Tobyhanna, Pennsylvania; Coolbaugh Learning Center located at 194 Main Street, Tobyhanna, Pennsylvania; and Pocono Elementary Center located at Warner Road, Tannersville, Pennsylvania (the "Facilities"), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency

Response Act ("AHERA"), 15 U.S.C. §§ 2641 to 2656 ("TSCA AHERA"). This action is brought in accordance with TSCA AHERA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R Part 22, with specific reference to the provisions set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of TSCA AHERA and the federal regulations implementing TSCA AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations of TSCA AHERA alleged herein.

II. General Provisions

1. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.

5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.
7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, the Facility is in compliance with the provisions of TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees.
10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
11. By signing and executing this CA, Respondent certifies that it has already spent at least fifty thousand eight hundred seventy five dollars (\$50,875) since EPA's March 2008 inspections for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all supporting cost documentation and information.
12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers,

directors, successors, and assigns of Respondent.

III. EPA's Findings of Fact and Conclusions of Law

13. Complainant has determined that Respondent has violated requirements of TSCA AHERA and the federal regulations implementing TSCA AHERA set forth at 40 C.F.R. Part 763 Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.
14. Respondent, is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA AHERA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools, including the Facilities, in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools, including the Facilities, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of TSCA AHERA.
15. The Facilities, Pocono Mountain East High School located at Pocono Mountain School Road, Swiftwater, Pennsylvania, Barrett Elementary Center located at Route 390, Cresco Pennsylvania, Clear Run Elementary Center located at 3700 Memorial Boulevard,

Tobyhanna, Pennsylvania, Coolbaugh Learning Center located at 194 Main Street, Tobyhanna, Pennsylvania, and Pocono Elementary Center located at Warner Road, Pennsylvania are each a "school" as that term is defined at Section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.

16. Each of the Facilities is a "school building" as that term is defined at Section 202(13) of TSCA AHERA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
18. 40 C.F.R § 763.93(g) (1)-(3), requires, *inter alia* that LEAs maintain complete and updated copies of management plans in LEA and school administrative offices, and make them available for inspection.
19. Inspections conducted by EPA in March 2008 found that Respondent had not made the management plans available at Pocono Mountain East High School, Barrett Elementary Center, Clear Run Elementary Center, Coolbaugh Elementary Center, and Pocono Elementary Center.
20. By failing to make the management plans available, Respondent violated the requirements of 40 C.F.R § 763.93(g) (1)-(3) and Section 207 of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

COUNT II

21. The allegations contained in paragraphs 1 through 20 are incorporated herein by reference.
22. 40 C.F.R. § 763.93(g)(4), requires, *inter alia*, that at least once each school year, the LEA notify in writing parent, teacher, and employee organizations of the availability of management plans and include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notifications.
23. Inspections conducted by EPA in March 2008 found that Respondent had not provided annual written notifications to parent, teacher, and/or employee organizations at each of the facilities.
24. Respondent's failure to provide the annual notifications at each of the facilities are violations of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

25. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), for Respondent's TSCA AHERA violations. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors,

Complainant and Respondent have determined that a civil penalty of thirteen thousand twenty three dollars (\$13,023) is appropriate.

26. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), *i.e.*, the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act* ("ERP"), dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.
27. Respondent certifies that it has spent fifty thousand eight hundred seventy five dollars (\$50,875) since EPA's March 2008 inspections to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of thirteen thousand twenty three dollars (\$13,023) of the civil penalty assessed against the Respondent.
28. Respondent consents to the assessment of a thirteen thousand twenty three dollars (\$13,023) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

29. This CAFO resolves only the civil claims for the specific violations alleged in this

CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA AHERA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. Effective Date

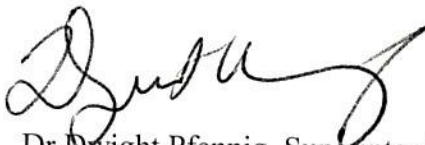
30. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

For Respondent:

3/23/09

Date



Dr Dwight Pfennig, Superintendent
Pocono Mountain School District

For Complainant:

4/13/09

Date



Richard Ponak
Enforcement Officer

Accordingly I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

4/28/2009

Date



Abraham Ferdas, Director
Land and Chemicals Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Respondent

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DOCKET NO: TSCA-03-2009-0100

FINAL ORDER

FINAL ORDER


The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of thirteen thousand twenty three dollars (\$13,023), but that the cash component of that civil penalty will be zero dollars (\$0).

In accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), the thirteen thousand twenty three dollars (\$13,023) civil penalty assessed against the Respondent is hereby remitted. The effective date of this Final Order is the date that it is filed with the Regional

Hearing Clerk.

4/30/09
Date





Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Subject: Toxic Substances Control Act
Pocono Mountain School District No. TSCA -03-2009-0100

Consent Agreement and Final Order

From:  Judith Katz, Acting Regional Counsel 
Office of Regional Counsel (3RC00)

Abraham Ferdas  AF
Waste Chemicals Management Division (3WC00)

To: Renée Sarajian, Regional Judicial Officer
Office of Regional Counsel (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and .18(b)(2), in settlement of alleged violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 201 *et seq.*, by the Pocono Mountain School District. A \$13,023.00 penalty has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for AHERA", dated January 31, 1989, as supplemented by the "Civil Monetary Penalty Inflation Adjustment Rule" effective March 15, 2004. TSCA Section 207(a) authorizes civil penalties to be reduced by the LEA's costs spent complying with AHERA requirements. The LEA in this case documented \$50,875.00 in expenditures since the March 2008 inspections to comply with AHERA and, therefore, the cash component of the \$13,023.00 assessed civil penalty was reduced to zero. This is consistent with the "assessing Administrative Civil Penalties against an LEA" section of the 1989 Interim Final Enforcement Response Policy for AHERA.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

cc: Dr. Dwight Pfennig, Superintendent
Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

IN RE:

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Docket No. TSCA-03-2009-0100

Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

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Consent Agreement and
Final Order

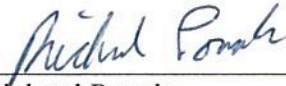
Respondent

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029 and that true and correct copies were served regular U.S. Mail upon the following person:

Dr. Dwight Pfennig, Superintendent
Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Date: 5/4/09



Mr. Richard Ponak
Pesticides/ Asbestos Enforcement Officer
U.S. EPA - Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 16 2009

Dr. Dwight Pfennig, Superintendent
Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Re: **Pocono Mountain School District**
Consent Agreement – Docket No. TSCA-03-2009-0100

Dear Dr. Phennig:

Enclosed, please find the Consent Agreement and Final Order ("CAFO") resolving case number: TSCA-03-2009-0100. Once you have signed the document at the yellow tab, send the entire original back to me. After I sign the Consent Agreement, I will forward the CAFO to management and the Regional Judicial Officer and recommend that they sign it as is appropriate. I will send you a copy of the signed CAFO once it is filed with the Regional Hearing Clerk.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (215) 814-2044.

Sincerely,

A handwritten signature in blue ink, which appears to read "Richard Ponak", is written over a horizontal line.

Richard Ponak
Pesticides/Asbestos Enforcement Officer

Enclosure

cc: